

Remarks/Arguments

A. Claims in the Case:

Claims 12-33 have been allowed. Claims 1 and 3 have been rejected. Claims 2 and 4-11 have been objected to. Claim 1 has been amended. Claim 5 has been canceled. Claims 1-4 and 12-33 are pending in the case.

B. Claim 5 Has Been Substantially Rewritten in Independent Form

In the Office Action, the Examiner stated that claims 2 and 4-11 would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims.

Claim 1, and the claims dependent on claim 1 (claims 2-4 and 6-11), now include features from claim 5. As such, Applicant submits that claim 1, and the claims dependent thereon, are in condition for allowance.

C. 35 U.S.C. §102 Rejections

Claims 1 and 3 were rejected under 35 U.S.C. §102(b) for allegedly being anticipated by U.S. Patent No. 6,018,095 to Lerch et al. ("Lerch"). The Office Action states "Lerch et al form a calcium phosphate article and immerse it in a liquid to improve mechanical properties. See column 2." Applicant respectfully disagrees with these rejections.

The standard for "anticipation" is one of fairly strict identity. To anticipate a claim of a patent, a single prior source must contain all the claimed essential elements. *Hybritech, Inc. v. Monoclonal Antibodies, Inc.*, 802 F.2d 1367, 231 U.S.P.Q.81, 91 (Fed.Cir. 1986); *In re Donahue*, 766 F.2d 531, 226 U.S.P.Q. 619, 621 (Fed.Cir. 1985). A claim is anticipated only if each and every element as set forth in the claim is found, either expressly or inherently described, in a single prior art

reference." *Verdegaal Bros. v. Union Oil Co. of California*, 814 F.2d 628, 631, 2 USPQ2d 1051, 1053 (Fed. Cir. 1987).

Amended claim 1 recites:

A method for making a molded calcium phosphate article comprising impregnating a rigid shaped article of calcium phosphate with an impregnating liquid for a period of time so that a compressive strength of the resulting impregnated article removed from the impregnating liquid is increased compared to that of said rigid shaped article without said impregnating treatment, wherein the rigid shaped article of calcium phosphate is a molded article from a paste of calcium phosphate cement.

Applicant submits that Lerch does not appear to teach or suggest all of the features of amended claim 1, and respectfully requests that the rejection thereof pursuant to 35 U.S.C §102(b) be withdrawn.

D. Allowable Subject Matter

Claims 2 and 4-11 were objected to for being dependent on a rejected base claim, but would be allowable if rewritten in independent form. In light of the arguments presented above, Applicant respectfully requests the objections against claims 2 and 4-11 be reconsidered and withdrawn.

Applicant acknowledges the allowance of claims 13-33.

Summary

In light of the above, Applicant submits that the pending claims are patentable. Favorable reconsideration is respectfully solicited.

Applicant has enclosed herewith a Fee Authorization in the amount of \$180 to cover the cost associated with the filing of an Information Disclosure Statement. If any extension of time is required, Applicant hereby requests the appropriate extension of time. Applicant believes no other fees are due in association with this submission and any of the accompanying documents. If any fees have been omitted or if any additional fees are required, please charge those fees to Meyertons, Hood, Kivlin, Kowert & Goetzel, P.C. Deposit Account Number 50-1505/5937-00500/EBM.

Respectfully submitted,



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